IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4929 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRMALAEN ARVINDBHAI INTWALA

Versus

KALAVATIBEN NATVERLAL

Appearance:

MR HARSHAD J SHAH for Petitioners

MS ROOPAL R PATEL for Respondent No. 1

None present for Respondent No. 2

MR VM PANCHOLI for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/03/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. It is not in dispute that the impugned order has been passed by the Collector, Bharuch under section 258

(1) of the Gujarat Municipalities Act, 1963.

3. Learned counsel for the respondent raised a preliminary objection that this writ petition is not maintainable as the petitioner has efficacious alternative remedy of appeal under subsection (2) of the aforesaid section against this order or revision under section 264.

4. Learned counsel for the petitioner contended that the right of appeal under subsection (3) of section 258 of the ACt is only available to the Municipality and not to the petitioner.

5. Though this is a debatable point but I do not consider it to be appropriate case where this point has to be decided for the reason that under section 264, the petitioner can file the revision application against this order. The appeal as well as revision application lies to the State Government.

6. Learned counsel for the petitioner submits that the revisional authority may now dismiss the revision application on the ground of limitation.

7. I do not find any substance in this contention for the reason that for all these years this writ petition is pending before this court. It is not the case where the petitioner has slept over his right. Otherwise also, the order is of 6-5-1997 and this writ petition has been filed in this court on 9-7-1997. Limitation for filing of the revision application is also not provided under section 264 of the Act. Looking to all these facts, in case the petitioner files the revision application before the State Government against the impugned order, it is expected of the State Government not to dismiss the same on the ground of limitation but to decide the same on merits.

8. The special civil application is dismissed only on the ground of availability of alternative remedy to the petitioner against the impugned order. Rule discharged. Interim relief, if any, granted by this court stands vacated. In the facts of this case, no order as to costs.

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zgs/-